

**Notice of Allowability****Application No.**

10/052,664

**Examiner**

Peter Paras, Jr.

**Applicant(s)**

CANNON ET AL.

**Art Unit**

1632

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the preliminary amendment filed on 1/17/02.
2. ☒ The allowed claim(s) is/are 1.
3. ☒ The drawings filed on 17 January 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH or DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)   | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                  |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>CA 63</u> . |
| 5 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. <u>01/02, 01/02</u> | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                          |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material            | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance         |
|   | 9 <input type="checkbox"/> Other  |

Applicant's preliminary amendment received on 1/17/02 has been entered in part. The amendments to the claims have been entered as follows: Claim 1 has been amended. Claims 2-25 have been cancelled. Claim 1 is pending and is under current consideration. The amendment to the specification was not entered, as it did not comply with 37 C.F.R. 1.121.

The substitute specification received on 5/10/02 has been entered.

#### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with David Chang on 9/4/03.

The instant application has been amended as follows:

In the specification, on page 1, in lines 6-8:

This application is a divisional application of U.S. Patent Application Serial No. 09/499,964, filed February 8, 2000, now U.S. Patent 6,380,374, which application  
[Pursuant to 35 U.S.C. § 119 (e), this application] claims priority to the filing date of the United States Provisional Patent Application Serial No. 60/119,321 filed February 9, 1999, the [disclosure] disclosures of which [is] are herein incorporated by reference.

In the claims:

1. An isolated Npt2B polypeptide [present in other than its natural environment, wherein said Npt2B polypeptide has] comprising the amino acid sequence set forth in

SEQ ID NO: [0]1.

The following is an examiner's statement of reasons for allowance: The instant application appears to be allowable over the prior art as the prior art does not anticipate or make obvious the amino acid sequence set forth in SEQ ID NO: 1.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Examiner Comment: The closest art of record Xu et al (Genomics, 1999, 62: 281-284) discloses a polypeptide having 99.9% homology to the amino acid sequence set forth in SEQ ID NO: 1. Xu et al functionally characterized said polypeptide and showed that it possesses the biological activity of a sodium-dependent phosphate transporter. See page 283 of Xu et al. In light of such, Xu et al concluded that said polypeptide is a functional sodium-dependent phosphate transporter.

Any inquiry concerning this communication or earlier communications from the examiner(s) should be directed to Peter Paras, Jr., whose telephone number is 703-308-8340. The examiner can normally be reached Monday-Friday from 8:30 to 4:30 (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Reynolds, can be reached at 703-305-4051. Papers related to this application may be submitted by facsimile transmission. Papers should be faxed via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Official Fax Center number is (703) 872-9306.

Inquiries of a general nature or relating to the status of the application should be directed to Dianiece Jacobs whose telephone number is (703) 305-3388.

Peter Paras, Jr.  
Art Unit 1632

**PETER PARAS**  
**PATENT EXAMINER**

